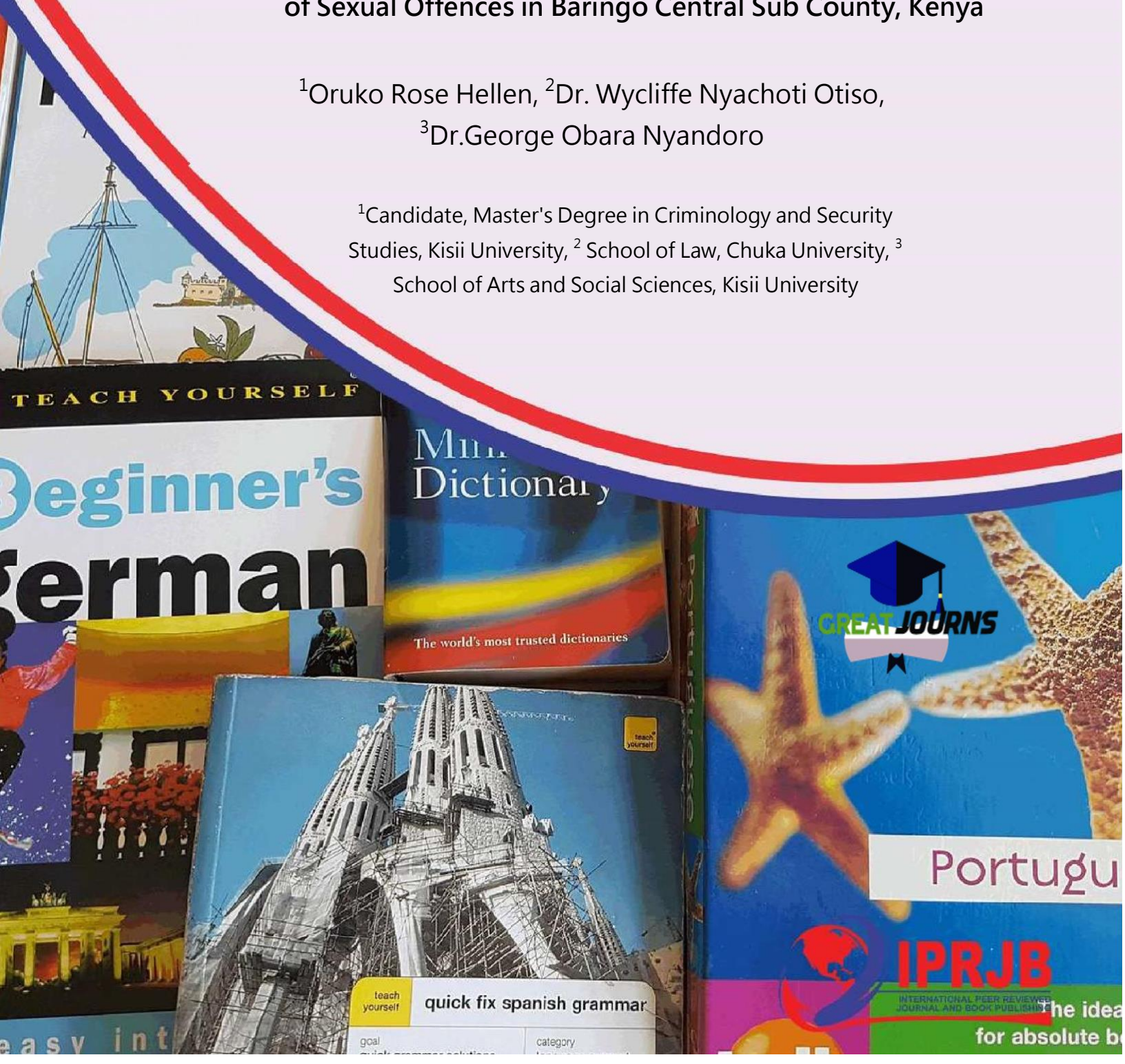
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The Influence of Forensic Evidence Collection on the Prosecution of Sexual Offences in Baringo Central Sub County, Kenya

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ABSTRACT: *Annual statistics by the Kenya Police Service show that there is high increase of sexual offences. While forensic evidence is employed for prosecution of sexual offences, its relevance to courtroom results remains uncertain. The aim of this paper was to investigate the influence of forensic evidence collection on the prosecution of sexual offences in Baringo Central Sub County.The study adopted a mixed method approach, utilizing both primary and secondary data. Data collection involved interviews with key informants, data abstraction through document review from police records and administering questionnaires. A total of 124 participants participated in the study. Both random and purposive sampling techniques were used. Results showed that even though evidence is gathered in most cases, there is insufficient documentary evidence collected which affects the quality of evidence and prosecution. The study also revealed that forensic evidence obtained if not properly managed or evaluated by investigators may not produce proof of legal significance. Moreover, some investigators may be unaware of the appropriate specimen to collect for forensic examination. Lack of circumstantial evidence was the major cause of collapse of sexual offence cases. Notwithstanding the notion of greater dependence, the influence of such material on the progress and conclusion of sexual offence cases is limited. The study recommends a number of measures to achieve successful prosecution and resolution of sexual offense cases. The study recommends; proper training of forensic investigators in quality investigation and handling of evidence, increase public understanding of sexual offense and cultivation of specialized knowledge in sexual offences within a cadre of professionals. Additionally, advancement at the international court level can serve as a model for prospective breakthroughs in local systems, such as enhanced cooperation between investigators and prosecutors, and defensive initiatives for victim-witnesses during trials.*

Key Words: Evidence management, Forensic Evidence; Prosecution, Sexual Offence

1.0 INTRODUCTION

Evidence management from the crime scene to the courtroom is crucial for the law enforcement community (Thomas, 2016; Gillen, 2019). Evidence suggests that only a few sexual offences are tried; disclosed to authorities, culminate in arrests or successfully prosecuted (Shako & Kalsi,2019). In such a complex environment, investigative procedures that enhance proof against perpetrators are critical, and the importance of technological advancements and competence in gathering and managing forensic evidence cannot be overemphasized (Amboko, 2018; Fisher, 2017). Forensic evidence gathering and interpretation are becoming critical components of criminal inquiries and convictions (Wells et al., 2020). Evidence suggests that in sexual offences incidents, recent surveys of law enforcement departments and forensic labs indicated a substantial proportion of uncommitted or unprocessed sexual assault kits (Spohn, 2020).

Nearly 20% of Kenyan females aged 15 to 49 have been subjected to different forms of sexual harassment. However, only 25 per cent of cases of sexual offences brought to a legal proceeding result in a conviction (Shako & Kalsi, 2019). The Kenya Federation of Women Lawyers, Kenya Chapter (FIDA–K) report states that 16,482 rape cases occur every year in Kenya (Komen, 2018). Some of these cases have remained unreported. Federation of Women Lawyers reported that it had processed about 521 cases brought forward so far across the country (FIDA, 2019). The increasing number of sexual abuse cases makes the country focus on developing and implementing stricter measures to manage sexual offences (TJRC, 2013).

Previous studies show that forensic evidence, when investigated, does not add considerably to the inspective procedure but is primarily used in prosecuting the offender (Thomas, 2016). On the contrary, some investigators suggest that forensic proof is merely slightly significant to prosecutors' decisions and is valuable for verifying suspects' involvement in a crime (Menaker et al., 2017). Although cases with the medical indication in a grave sexual offence are more likely to cause in the detention and prosecution of a suspect, there exists inadequate confirmation to believe that the incidence of overseas DNA considerably raises detention likelihood (Wambui, 2018).

Past studies have demonstrated that cases with SAK proof are much likely to have custodies trailed than those lacking such evidence. The outcomes also suggest that prosecutors prefer scientific confirmation for sentencing (Cohen & Yang, 2019; Bigambo, 2017). Foresnisc evidence has grown in importance over the years as a result of the technological improvement and advancements in its responsiveness to residual evidence (Mozayani & Parish-Fisher, 2017; Tinkey, 2019). With a focus on genetic testing, the advent of the polymerase chain reaction (PCR), including the application of short tandem repeat (STR) indicators in DNA for person detection, transformed the discipline of forensics (Mozayani & Parish-Fisher, 2017).

However, the significance of evidence in determining whether to prosecute, its significance in plea bargains and the determination of suitable penalty is subject to a decision maker' s judgment (Wyatt, 2014). In Kenya, a significant component in inadequate forensic evidence handling is the absence of a chain of evidence protocols (Shako & Kalsi, 2019) leading to low conviction rates (Shako & Kalsi, 2019). The increasing number of sexual abuse cases makes the country focus on developing and implementing stricter measures to manage sexual offences (TJRC, 2013).

In the absence of an autonomous nationwide forensic framework, the various arms of forensic service supply lack cooperation, operationalisation, synergy, or oversight in achieving evidence-based conclusions (Shako & Kalsi, 2019). It is against this backdrop that the study aimed to investigate the

influence of Forensic Evidence Collection on the Prosecution of Sexual Offences in Baringo Central Sub County.

II: LITERATURE REVIEW

Conversations with sexual offences detectives have shown that the most critical aspects officers evaluate when conducting sexual offence inquiries and offered insight on the possible implications of forensic data (Henry & Jurek, 2020). As per detectives, forensic evidence can assist in perpetrator recognition. A previous study assessed the impact of forensic evidence on lawsuit processing results in 4,205 legal proceedings across five US jurisdictions. When adjusting for criminal type, forensics influenced judgment at various phases of prosecutions (Menaker et al., 2017). Arrests were more frequent in cases involving the collection of forensic material. In contrast, the assessment of forensic evidence was connected with case recommendations to attorneys, indictments filed, convictions at trials, and longer sentences for perpetrators (Menaker et al., 2017).

Tasca et al., (2012) discovered that the presence of "forensic evidence" boosted the likelihood of identifying and apprehending a suspect in a pool of 200 sex crimes. For instance, in a subset of 137 grownup sex crimes, those having positive forensic evidence had a greater chance of progressing through the judicial system. The conclusions are in agreement with other research indicating that corroborated forensic evidence had a substantial role in prosecuting sex offences. In a subset of 371 sex crimes in Los Angeles, scientific examination raised the proportion of instances that resulted in an apprehension, charging, or sentencing marginally (Menaker et al., 2017).

In the assessment of 569 sex crimes, it was established that documented forensic evidence increases the probability of suspect questioning (Menaker et al., 2017). Taken together, the research on corroborating analysis in assault cases demonstrates that its inclusion increases the likelihood of formal charges or cases proceeding to more favourable dispositions, like trial conviction and harsh penalties (Menaker et al., 2017). Moreover, evidence suggests that forensic evidence influence the prosecution of sexual offences (Spohn, 2020). A classic example is the results from the United States Department of Justice data from 2010 – 2014, on Rape, Abuse and Incest National Network (RAINN), approximate that for every 1,000 rape cases, 384 are made known to the police, 57 as a consequence of arrest, 11 are submitted for prosecution, seven results to a conviction and six results in imprisonment (Drips, 2018). This contrasts to a high rate at each phase for other offences, such as burglary.

Evidence suggests that incidents involving evidence substantiating victims' accusations are much less prone to be categorized as "unsubstantiated" by authorities (Mozayani & Parish-Fisher, 2017). Whenever victims violently opposed assaults or even had proof of injuries, authorities are much more

inclined to discover sex crimes and regard assaults to be unlawful (Ruo, 2020). Similarly, sexual offences provide a formidable obstacle for the authorities and the criminal justice as a whole (Bornman, 2015). Although police officers accept that assault and associated sexual offences occur, they may not recognize the large number of incidents that fulfil the definition of these crimes (South African Medical Research Council, 2017). Makasa and Heathfield (2018) discovered that in all cases when the perpetrator was confirmed, no forensic DNA evidence was employed for the determination or corroboration of the testimony in Zambia.

In Kenya, a significant component in inadequate forensic evidence handling is the absence of a chain of evidence protocols (Shako & Kalsi, 2019). The persistent lack of well-managed proof in compliance with global forensic benchmarks; forensic inspection of injury issues, their understanding, documentary evidence in clinical documents and forensic images; and efficient oversight of forensic evidence, along with its compilation, labelling, protection, storage, as well as assessment, continues to be a significant source of low conviction rates (Shako & Kalsi, 2019); the delivery of justice is vested upon the Kenyan Police. In Kenya, the police department is responsible for arresting a suspect upon a complaint of an occurrence, conducting an investigation, compiling a case file, and charging the criminal in courts (Wangamati et al., 2019). Despite numerous media stories and yearly crime reporting data indicating a significant proportion of sexual offences registered, court results indicate that few perpetrators are prosecuted (Gau, 2018).

Consequently, a scarcity of substantial proof hampers sexual crime prosecutions due to inadequate evidence collecting or quality controls. As a result, only 25 per cent of cases of sexual offences brought to a legal proceeding result in a conviction. This negative effect results from inadequate evidence handling and storage (Shako & Kalsi, 2019). The absence of a Chain of Custody document that tracks the transfer of incriminating. In the absence of an autonomous nationwide forensic framework, the various arms of forensic service supplylack cooperation, operationalisation, synergy, or oversight in achieving evidence-based conclusions (Shako & Kalsi, 2019).

III: RESEARCH METHODOLOGY

The study was carried out in Baringo Central Sub-County. Baringo Central Sub County is one of the six constituencies in Baringo County of Kenya. This study adopted a mixed method approach that combines both qualitative and quantitative research approaches. This stance guaranteed rigor and validity of the findings due to its combined strategy platform of conducting research. This mixed methods design was deemed fit for this study because it allows for both qualifications of data for verification of existing theoriesas well as expression of human standpoints, (Creswell & Poth, 2016).
The target population are all personnel involved the prosecution of sexual offenses. These include the

magistrates, prosecutors, the crime scene investigators and medical officers.
Table 1 presents sample size and sampling procedures.

Table 1.Sample size

Respondent	Sample	Sampling procedure
Crime scene investigators	119	Simple random
Police officer (Gender and children desk)	1	Purposive
Medical officer	1	Purposive
Magistrate	1	Purposive
Prosecutors (DPP)	2	Purposive

The researcher used simple random sampling to pick 119 crime scene investigators out of 183 in that section,2 DPP were also selected using purposive sampling. Purposive sampling was used to select 1 police officer in charge of the gender and children desk, 1 medical officer and 1 magistrate. Random sampling technique was used to give respondents equal chances of selection.

Questionnaires, interviews and document analysis were used to collect data for this study. Questionnaires were used to provide quantitative data while interviews were conducted to collect qualitative data. Documentary review involved the analysis of secondary data sources. The documents that were reviewed included forms from the hospital, judgment reports, charge sheets and documentary proofs. These were examined to give a picture on the perceived manipulation of forensic evidence that may lead to offenders notbeing prosecuted. The review of literature focused on existing cases presented by public prosecutors and judgments based on forensic-evidence. This situated the study to be set in context by analytically arguing and referencing the present scenarios and presenting them in a reasonably contended method, and emphasizing those parts that will deliver new understandings. Documents were subjected to content analysis.

The instruments were piloted at Soy Sub- County in Uasin Gishu County to establish the effectiveness of the research instruments (Ponto, 2015). Quantitative data was evaluated quantitatively using summary statistics like percentages, whereas qualitative data was analysed qualitatively utilizing concepts, patterns, and narratives. Quantitative data was analysed using SPSS Version 22. Data screening was performed to ensurethat coding is done appropriately before being analysed with descriptive statistics and displayed in frequency distribution tables. The qualitative data were categorized according to the study's aims and

study objectives. Thematic illustration involved: certification of the information and the procedure of information gathering; organization or classification of the information into notions; association of the data to display how one notion may affect a different; association or legitimization, by assessing different clarifications, disconfirming proof, and examining for undesirable cases; and finally demonstrating the interpretation or writing (Terrell, 2015).

Key ethical considerations relate to respect for both people and the justice scheme. Ethical clearance to conduct the study was sought and obtained from University Ethical Review committee. Voluntary informedpermission of the subjects was required from the participants (Yip et al., 2016). The participants were formally assured of privacy and anonymity of data. All the participants for this questionnaire were advised accordingly about the aim of the study and what the study intend to achieve at the end of the research. This was accomplished using an introductory as well as a consent letter that asked the participant to sign, indicating their intention to engage in the study. The participants' confidentiality was protected by withholding information about their identities, affiliations, or other details that may reveal their identity (Qamar, 2018).

IV. RESULTS AND DISCUSSIONS

The aim of this study was to determine the influence of forensic evidence collection on the prosecution of sexual offences in Baringo Central Sub County, Kenya. First, the CSIs were asked to indicate the methods used to collect forensic evidence. The responses are shown in Table 1.

Table 2: Methods Used to collect forensic evidence

Method	Yes(n)	No(n)
Tweezers	18	82
Plastic container with lids, a filtered vacuum device and knife, blizzard kit	76	24
A sterile cloth square and distilled water	28	72
Smear slides, a scalp and scissors	33	67
Blood collection kit	49	51

The findings show that tweezers were not widely used to collect evidence. Only 18 of the 119 CSI used tweezers to collect evidence related to sexual offences while 82 did not. Over half of the CSI used Plastic containers with lids, a filtered vacuum device and knife, blizzard kit as opposed to 24 CSIs who did not usethe strategy. Moreover, less than half of the CSI used smear slides, a scalp and scissors to collect evidence, while 67% of the CSI did not use.

Respondents reported that there was inadequate storage amenity for the proof gathered in other health amenities to be dispatched to Nairobi based facility. This made it problematicfor the evidence collected at rural public health amenities to be exposed to more examination by the government chemist, hence not adduced in court as corroborative evidence.

In addition, the respondents were asked to indicate the degree to which they collect criminological evidenceusing the methods. The results are presented in Table 3.

Table 3: Degree of Usage

	Not at all	Low extent	Moderate extent	Great extent	Very great extent
Digital photography	15 (15%)	10 (10%)	39 (39%)	16 (16%)	20 (20%)
Crime scene mapping	6 (6%)	3 (3%)	28 (28%)	31 (31%)	32 (32%)
Finger prints	10 (10%)	10 (10%)	14 (14%)	24 (24%)	42 (42%)
blood stain pattern analysis	10 (10%)	19 (19%)	23(23%)	24 (24%)	24 (24%)
Latent print processing	25 (25%)	24 (24%)	22 (22%)	19 (19%)	10 (10%)

Fifteen CSI indicated that they did not use digital photography; ten used at a low extent, 39 used moderately, 16 used at a significant degree. In contrast, 20 investigators were used to a very great extent. The findings indicate that majority used this method moderately. Findings indicate that majority of the CSI used crime scene mapping and fingerprints to a very great extent. Though the finding indicates that most of the CSI used fingerprints, a sizeable proportion never used fingerprints. This may lead to weak prosecution of sexual offence cases (Amboko, 2018). Similar observations are reported in literature. In their study, Shako and Kalsi (2019) reported that, only 25 per cent of cases of sexual offences brought to a legal proceeding result in a conviction. Menaker et al., (2017) in their study assessed the impact of forensic evidence on lawsuit processing results and found that forensics influenced judgment at various phases of prosecutions. However, Makasa and Heathfield (2018) discovered that in all cases when the perpetrator was confirmed, no forensic DNA evidence was employed for the determination or corroboration of the testimony. The result shows that majority of the CSI used bloodstain pattern analysis to collect evidence. About 25% of the CSI never used latent print processing to collect criminological evidence, while 22% of CSI used it to a moderate extent. However, the majority of the CSI never used this method to collect evidence. This implies that most of the evidence may end up uncollected, given that such a tool of high efficiency wasn't being used to collect evidence. Similarly, despite numerous media stories and yearly crime reporting data indicating a significant proportion of sexual offences registered, court results indicate that few perpetrators are prosecuted (Gau, 2018).

Similar conclusions were reached by Shako and Kalsi (2019) who reported that in the absence of an established forensic framework, the various arms of forensic service supply lack cooperation, operationalisation, synergy, or oversight in achieving evidence-based conclusions.

The CSIs were asked to indicate the challenges encountered during evidence collection. The responses are shown in Table 4.

Table 4: Challenges Encountered during Evidence Collection

Challenge	Not at all	Low extent	Moderate extent	Great extent	Very great extent
Prioritization of efforts	12	20	42	11	15
Documentation and evaluation of thescene	10	23	30	22	15
Processing the scene	11	19	29	18	23
Completing /recording the crime scene investigation	18	15	21	22	24

A small proportion (12) of the CSI never experienced challenges arriving at the sight initial response/prioritization of efforts; 20 experienced this challenge to a low extent. Most CSIs experienced this challenge to a moderate extent, while very few never experienced this challenge. The findings suggest that sexual evidence may be tampered with if CSI has challenges arriving at the sight for the initial response.

The different responses indicated that 10% never experienced a challenge during the preliminary documentation and evaluation of the scene, 23 experienced to a low extent, 30 experienced to a moderate extent, 22 experienced to a great extent. In contrast, 15 experienced, to a very great extent, challenges related to the collection of evidence in the preliminary documentation and evaluation of the scene. The findings show that most of the CSI had great challenges during the completion and recording at the crime scene. A small proportion (10%) of CSI never experienced challenges during processing of evidence at the scene compared to (18%) that experienced challenges to a great extent while 23 (23%) experienced to a very great extent. Majority of the CSI had moderate challenges while a few never experienced the challenge of processing. Some practitioners were unaware of the appropriate specimen to collect for forensic examination. While forensic evidence lends more weight to a prosecutor, whenever this evidence was not obtained, and there wasno physician available to act as a legal doctor, fruitful prosecution of a case was a challenge. The reason

given for the low usage of DNA was that the infrastructure available could not allow it. Besides, the nearestgovernment laboratory was in Nairobi, thus making it difficult to carry out DNA to ascertain blood samplesof sexual offenders.

5.0 CONCLUSION AND RECOMMENDATIONS

The investigation of sexual offences in Baringo Central sub-county yields some significant conclusions aboutthe prosecution's handling of forensic evidence. Although evidence is gathered in most cases, there exist insufficient documentary evidence for successful prosecutions. Forensic evidence could well be obtained butnever evaluated, and as a consequence, processing by the forensics lab may not produce proof of legal significance. Numerous explanations can be advanced for these findings. On occasion, detectives, as well asprosecutors, may well not require the assistance of the forensics lab to do the analysis necessary to make a ruling, particularly when the accused admits to the offence. When key evidence is analyzed, it might not be of acceptable quality to determine results. Such considerations affect the significance of forensic findings in inquiries and convictions. Some practitioners may be unaware of the appropriate specimen to collect for forensic examination. There may be no physician available to act as a legal doctor for fruitful prosecution. This implies that the evidence collected may not be reliable in prosecuting sexual offences.

The study suggests some promising tactics for successful prosecution and resolving sexual offense cases successfully. They span from efforts to properly train forensic investigators in quality investigation and handling of evidence, increase public understanding of sexual offense to strategies aimed at cultivating specialized knowledge in sexual offences within a cadre of professionals. Additionally, numerous advancements at the international court level can serve as a model for prospective breakthroughs in local systems, such as enhanced cooperation between investigators and prosecutors, and defensive initiatives for victim-witnesses during trials.

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